

RECEIVED  
CENTRAL FAX CENTER

AUG 07 2007

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that the following papers are being facsimile transmitted to Mail Stop Appeal Brief-Patents at the Patent and Trademark Office at facsimile number 571-273-8300 on the date indicated below.

Signed: \_\_\_\_\_

Barbara Bryant

Dated: \_\_\_\_\_

August 7, 2007

PATENT

## In the United States Patent and Trademark Office

Applicant: Paboojian et al.

Applicant's Ref: 0050.01

Application No: 09/731,318

Filed: December 6, 2000

Title: RECEPTACLES TO FACILITATE

THE EXTRACTION OF POWDERS

Examiner: Mendoza, Michael G.

Group Art Unit: 1734

Confirmation Number: 1028

SUPPLEMENTAL APPEAL BRIEF

Mail Stop Appeal Brief-Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

In response to the Examiner's Final Rejection of August 19, 2005, the Applicant of the above-referenced patent application (hereinafter Appellant) hereby appeals to the Board of Patent Appeals and Interferences. Appellant requests the reversal of the Final Rejection.

PATENTS  
Application No. 09/731,318  
Attorney Docket: 0050.01

***(1) Real Party in Interest***

The real party in interest of the present application is Nektar Therapeutics (formerly Inhale Therapeutic Systems, Inc.), having a place of business at 150 Industrial Road, San Carlos, California 94707.

***(2) Related Appeals and Interferences***

Appellant, Appellant's legal representative, and assignee are aware of no appeals or interferences which will directly affect or be directly affected by or have a bearing on the Board's decision in the present appeal.

***(3) Status of Claims***

Claims 1-4, 13-22, and 31-34 are presently pending in the case. Claims 5-12, 23-30, and 35-37 have been cancelled. Claims 1-4 have been finally rejected. Claims 13-22 and 31-34 have been allowed. The rejection of each of claims 1-4 is hereby appealed.

***(4) Status of Amendments***

No amendments after Final Rejection have been filed. Accordingly, all amendments made during prosecution of the case have been entered.

***(5) Summary of the Claimed Subject Matter***

As set forth in Appellant's independent claim 1 and discussed in the specification at page 10 line 1 through page 11 line 12, a receptacle (e.g. element 10) for holding fine powder medicament comprises a receptacle body (12) that defines an enclosed cavity (20), wherein the receptacle body has a top end (14) and a bottom end (16). A version of the receptacle can be seen in Figures 1 and 2. The bottom end (16) of the receptacle body (12) includes a raised central region (26) that extends upwardly into the cavity (20).

The raised central portion (26) of the receptacle body (12) allows the fine powder medicament to be aerosolized and delivered out of an opening that has been created in the enclosed receptacle or through an extraction tube that has been inserted into the enclosed

PATENTS  
Application No. 09/731,318  
Attorney Docket: 0050.01

receptacle (10) as shown in Figures 3 and 4. Initially, however, the cavity is enclosed with the fine powder medicament stored within the enclosed cavity.

**(6) *Grounds of Rejection to be Reviewed on Appeal***

Appellant requests review of the Examiner's following grounds of rejection:

Claims 1-4 have been rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent 3,980,074 to Watt et al (hereinafter Watt et al).

**(7) *Argument***

Appellant believes each of claims 1-4 are improperly rejected and are therefore allowable for the following reasons.

**The rejection of independent claim 1 under 35 U.S.C. 102(b) is improper**

Watt et al does not anticipate claim 1. To sustain a section 102 rejection, the reference relied upon, must disclose each and every element of the claimed invention. Non-disclosure of a single element of the claim negates anticipation. Claim 1 is to a receptacle comprising, inter alia, a receptacle body that defines an enclosed cavity containing powdered medicament. Watt et al does not disclose an enclosed cavity. Instead, the cavity of Watt et al has several openings, such as vents 11 and opening 2. Since all features of claim 1 are not disclosed by Watt et al, the reference does not anticipate the claim and Applicant requests reversal of the rejection.

The cavity of Watt et al is not "enclosed." As discussed throughout Appellant's specification, the powder medicament is contained within an enclosed cavity, such as a sealed blister pack (see page 7, lines 25-35). In this way, the powder medicament may be stored on the shelf prior to use and may be protected from the environments degrading effects. The enclosed cavity is then punctured or otherwise opened to allow for the powder medicament to be

## PATENTS

Application No. 09/731,318

Attorney Docket: 0050.01

aerosolized. In an alternative version, openings may be preformed into the enclosed cavity and these preformed openings include a removeable cover that allows for access to the cavity (see page 9, lines 28-34). Watt et al's cavity is, thus, not in any way "enclosed."

Claims 2-4 depend from claim 1 and are allowable over Watt et al for at least the same reasons as their base claim.

AUG 07 2007

PATENTS  
Application No. 09/731,318  
Attorney Docket: 0050.01**Conclusion**

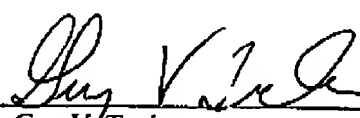
Thus, it is believed that all rejections made by the Examiner have been addressed and overcome by the above arguments. Therefore, all pending claims are allowable. A reversal is respectfully requested.

Should there be any questions, Appellant's representative may be reached at the number listed below.

Respectfully submitted,

NEKTAR THERAPEUTICS  
(formerly INHALE THERAPEUTIC  
SYSTEMS)

Dated: 07 AUG 2007

By:   
Guy V. Tucker  
Reg. No. 45,302

Please send all correspondence to:  
Guy Tucker  
Nektar Therapeutics  
(formerly Inhale Therapeutic Systems, Inc.)  
150 Industrial Road  
San Carlos, CA 94070  
Phone: (650) 620-5501  
Fax: (650) 631-3125

AUG 07 2007

PATENTS  
Application No. 09/731,318  
Attorney Docket: 0050.01**(8) Claims Appendix**

1. A receptacle comprising:  
a receptacle body that defines an enclosed cavity containing powdered medicament, wherein the receptacle body has a top end and a bottom end, and wherein the bottom end of the receptacle body includes a raised central region that extends upwardly into the cavity.
2. A receptacle as in claim 1, wherein the receptacle body further comprises at least one curved wall that in combination with the raised central region forms a generally semi-toroidal geometry in the cavity.
3. A receptacle as in claim 1, wherein a portion of the bottom end is flat in geometry.
4. A receptacle as in claim 1, wherein the receptacle body further includes a tab extending from the cavity.

**PATENTS**  
Application No. 09/731,318  
Attorney Docket: 0050.01

**(9) Evidence Appendix**

none

PATENTS  
Application No. 09/731,318  
Attorney Docket: 0050.01

**(10) Related Proceedings Appendix**

none